

Hand-Delivered

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL ACTION FILE NO. 3:21-CV-640-FDW-DSC

FILED

CHARLOTTE, NC

MAY 31 2022

MARIANO OSPINA BARAYA,

)

Plaintiff,

)

)

Vs.

)

)

FRANCISCO JAVIER OSPINA BARAYA,

)

et al,

)

)

Defendants.

)

)

**US DISTRICT COURT
WESTERN DISTRICT OF NC**

**MOTION FOR
DEFAULT JUDGEMENT**

Plaintiff Mariano Ospina Baraya, acting Pro Se, hereby most respectfully requests this Honorable Court to grant this Motion for Default Judgement under Federal Rule of Civil Procedure 55, per the Entry of Default by the Clerk of Court against the Defendants Francisco Javier Ospina Baraya and Helena Baraya de Ospina as they failed to answer, plead, or defend in a timely and legal manner to the charges of fraud and undue influences brought by Plaintiff on the Amended Verified Complaint filed on December 15, 2021.

In support of this Motion for Default Judgement Plaintiff Ospina hereby states the following:

1. Plaintiff hereby certifies that he has served the Defendants Francisco Javier Ospina Baraya and Helena Baraya de Ospina with a true and correct copy of the Amended Verified Complaint and Summons by mailing them via Federal Express International Priority. Plaintiff Ospina filed with this Court the corresponding Affidavit of Service on May 6, 2020, with attachments.

2. Defendant Francisco Javier Ospina was served at his business office in Bogota, Colombia. Proof of the corresponding Federal Express International Priority mailing receipt is attached to the Affidavit of Service as Exhibit A. Mailing email confirmation is likewise attached as Exhibit B.

3. Defendant **Helena Baraya de Ospina** was served at her business office in Bogota, Colombia. Proof of the corresponding Federal Express International Priority mailing receipt is attached to the Affidavit of Service as **Exhibit C**. Mailing email confirmation is likewise attached as **Exhibit D**.

4. Defendant **Francisco Javier Ospina** was served on May 5, 2022, at his business office in Bogota, Colombia. The corresponding Federal Express International Priority proof of delivery receipt is attached to the Affidavit of Service as **Exhibit E**. FedEx delivery email confirmation is likewise attached to the Affidavit of Service as **Exhibit F**.

5. Defendant **Helena Baraya de Ospina** was served on May 5, 2022, at her business office in Bogota, Colombia. The corresponding Federal Express International Priority proof of delivery receipt is attached to the Affidavit of Service as **Exhibit G**. FedEx delivery email confirmation is likewise attached to the Affidavit of Service as **Exhibit H**.

6. Defendants **Francisco Javier Ospina Baraya and Helena Baraya de Ospina**, on May 5, 2022, at 11:00 AM EST, were served with a correct and true copy of the Amended Verified Complaint and Summons, which were delivered at their business office located at Carrera Avenida 24 Numero 39-32, in Bogota D.E., Colombia. This is the registered address as noted in the public record of the documents of incorporation of **Fundación Zulaibar**, also attached to the Affidavit of Service as **Exhibit I**.

7. Defendants **Francisco Javier Ospina Baraya and Helena Baraya de Ospina**, as of Friday, May 27, 2022, failed to respond, plead, or defend from the charges brought to them by the Amended Complaint and Summons.

DAMAGES CAUSED TO PLAINTIFF OSPINA

8. Defendants **Francisco Javier and Helena Baraya's illegal acts have been a deliberate, malicious, and treacherous maneuver that constitutes a conversion, fraud, and assets misappropriation**, causing severe harm, injury, and irreparable damages to Plaintiff. Defendants **Francisco Javier and Helena Baraya** have untruthfully denied the existence of the five million dollars (USD\$5,000,000) from the sale of **Mariano's** shares of **Ospinas y Cia. S.A.** These fraudulent and illegal acts and maneuvers have wrongfully deprived, harmed, and injured Plaintiff by the conversion, misappropriation, and hiding of his inheritance money.

Defendants Francisco Javier and Helena Baraya, and siblings Angela, Rafael, and Patricia, using illegal, fraudulent, malicious, and surreptitious maneuvers caused the illegal sale of Mariano's shares in Ospinas y Cia. S.A. for over five million dollars (USD\$5,000,000). This fraudulent maneuver deprived, and defrauded Plaintiff of his inheritance money due to a calculated and nefarious asset misappropriation, causing him severe and irreparable damages.

Defendants Francisco Javier, Helena Baraya, Angela, Rafael, and Patricia by taking and hiding the five million dollars from the sale of the Ospinas y Cia. S.A., in secret bank accounts, including Citibank, of which no less than one million dollars (USD\$1,000,000) belongs to Plaintiff. This fraudulent maneuver has wrongfully deprived Plaintiff of his inheritance money, an illegal asset misappropriation that has caused him severe and irreparable damages.

9. All the illegal and surreptitious actions committed in clear and defiant fraud, misappropriation of assets, and conversion by the Defendants **Francisco Javier and Helena Baraya, and siblings Angela, Rafael, and Patricia** have caused Plaintiff severe and extreme affliction, aggravation, distress, harm, injury, pain, and vexation, and severe and irreparable health, emotional, mental, physical and material damages by depriving Plaintiff of his legal inheritance of no less than one million dollars (USD\$1,000,000) belonging to Plaintiff.

Plaintiff has had to live, unjustly and unnecessarily, in poverty, penniless, in distress, in misery, in need, and in despair due to hardship and duress. Defendant **Francisco Javier** owes Plaintiff more than one million dollars (USD\$1,000.000) from his legal inheritance from his father **Mariano**. These actions have caused Plaintiff compensation for causing severe and extreme affliction, aggravation, distress, harm, injuries, pain, vexation, and irreparable health, emotional, mental, physical, and material damages by depriving Plaintiff of his legal inheritance of no less than one million dollars (USD\$1,000,000) belonging to Plaintiff.

10. All the illegal and surreptitious actions of fraud and undue influence committed by the Defendants **Francisco Javier and Helena Baraya**, and by Plaintiff's siblings **Angela, Rafael, and Patricia** which have caused Plaintiff severe and extreme affliction, aggravation, distress, harm, injury, pain, and vexation, and severe and irreparable health, emotional, mental, physical and material damages by depriving Plaintiff of his legal inheritance of no less than one million dollars (USD\$1,000,000) belonging to Plaintiff as his legal and rightful inheritance.

Plaintiff has lived for the last twenty years in absolute misery, grief, and pain due to severe illnesses, emotional and mental distress, insufficient income, and distressing living conditions. He lost his health, his wellbeing, his peace, and his business. This situation has deteriorated slowly but steadily, year by year, as more illnesses have occurred. And this situation got even worst since the Covid-19 pandemic as he got extremely sick due to the pandemic and the lack of economic resources. Plaintiff desperately needs his inheritance money to live, while Defendants **Francisco Javier and Helena Baraya**, and his siblings **Angela, Rafael, and Patricia** have been living all these many years lavishly, luxuriously, plentiful, prodigal, and extravagantly at the expense and the detriment of Plaintiff.

11. Plaintiff has suffered extreme distress due to mental health issues, which Defendants **Francisco Javier and Helena Baraya**, and his siblings **Angela, Rafael, and Patricia** are very well aware of. Nevertheless, they intentionally, willingly, and premeditatedly conspired, colluded, and cooperated to deprive Plaintiff of his legal inheritance and right, causing him absolute misery, grief, and pain due to severe illnesses, emotional and mental distress, insufficient income, lack of medical care and distressing living conditions.

RELIEF SOUGHT

12. That this Honorable Court upon final hearing, order the defendant **Francisco Javier and Helena Baraya, and Fundación Zulaibar** and **CITIBANK** to convey, transfer and pay to Plaintiff the money belonging to him as his legal and rightful portion and a fair share of his inheritance from the clandestine, illegal, and surreptitious sale of the shares of **Mariano in Ospinas y Cia. S.A.**, which is one million dollars (USD\$1,000,000).

13. That this Honorable Court enters an order requiring defendant **Francisco Javier and Helena Baraya and Fundación Zulaibar** to pay to Plaintiff one million dollars (USD\$1,000,000) in damages, compensation, and restitution for causing Plaintiff severe and extreme affliction, aggravation, distress, injuries, pain, vexation, and irreparable health, emotional and material damages and loses.

14. That this Honorable Court enters an order requiring defendants **Francisco Javier and Helena Baraya, and Fundación Zulaibar** to pay to Plaintiff one million dollars (USD\$1,000,000) in compensatory, restitution, retribution, and punitive damages, expenses, costs, and any other form of

compensation, restitution and retribution deemed appropriate, just, and fair by this Honorable Court.

WHEREFORE, Plaintiff most respectfully prays that this Honorable Court will find it fair and just to issue the requested order that the defendants **Francisco Javier, Helena Baraya, and Fundación Zulaibar** and CITIBANK to convey, transfer, and pay to Plaintiff the one million dollars (USD\$1,000,000) belonging to him from his just portion and a fair share of inheritance from the sale of the shares of Mariano in Ospinas y Cia. S.A.

Furthermore, to enter an order requiring Defendants **Francisco Javier and Helena Baraya, and Fundación Zulaibar** to pay Plaintiff one million dollars (USD\$1,000,000) in damages, compensation, and restitution.

And finally, to enter an order requiring defendants **Francisco Javier and Helena Baraya, and Fundación Zulaibar** to pay Plaintiff one million dollars (USD\$1,000,000) in retribution, and punitive damages, expenses, costs, and any other form of compensation, restitution, and retribution deemed appropriate, just, and fair by this Honorable Court.

Respectfully submitted on this the 27th day of May 2022.

Plaintiff Mariano Ospina Baraya

CERTIFICATE OF SERVICE

Plaintiff Ospina hereby certifies that he has mailed a true and correct copy of the foregoing **Motion for Default Judgement** to Defendant Francisco Javier Ospina Baraya to the address of his business office located at Carrera Avenida 24 Numero 39-32, in Bogota D.E., Colombia.

Plaintiff Mariano Ospina Baraya

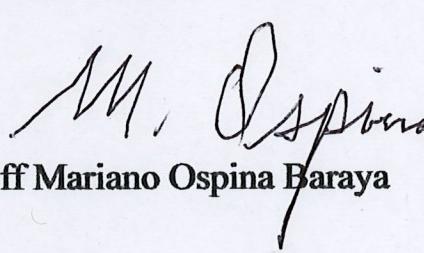
compensation, restitution and retribution deemed appropriate, just, and fair by this Honorable Court.

WHEREFORE, Plaintiff most respectfully prays that this Honorable Court will find it fair and just to issue the requested order that the defendants **Francisco Javier, Helena Baraya, and Fundación Zulaibar** and **CITIBANK** to convey, transfer, and pay to Plaintiff the one million dollars (USD\$1,000,000) belonging to him from his just portion and a fair share of inheritance from the sale of the shares of **Mariano in Ospinas y Cia. S.A.**

Furthermore, to enter an order requiring Defendants **Francisco Javier and Helena Baraya, and Fundación Zulaibar** to pay Plaintiff one million dollars (USD\$1,000,000) in damages, compensation, and restitution.

And finally, to enter an order requiring defendants **Francisco Javier and Helena Baraya, and Fundación Zulaibar** to pay Plaintiff one million dollars (USD\$1,000,000) in retribution, and punitive damages, expenses, costs, and any other form of compensation, restitution, and retribution deemed appropriate, just, and fair by this Honorable Court.

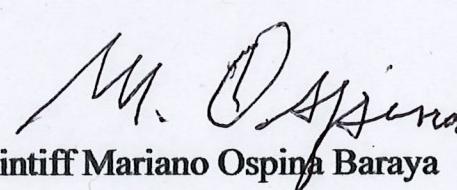
Respectfully submitted on this the 31st day of May 2022.



Plaintiff Mariano Ospina Baraya

CERTIFICATE OF SERVICE

Plaintiff Ospina hereby certifies that he has mailed a true and correct copy of the foregoing **Motion for Default Judgement** to Defendant Francisco Javier Ospina Baraya to the address of his business office located at Carrera Avenida 24 Numero 39-32, in Bogota D.E., Colombia.



Plaintiff Mariano Ospina Baraya